

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

Civil Action No. 05-CV-40147-FDS

Tommark, Inc. d/b/a )  
Sterling Associates, )  
Plaintiff )

v. )

Travelers Property Casualty )  
Company of America f/k/a )  
Travelers Indemnity Company )  
of Illinois and Travelers )  
Indemnity Company, )  
Defendants )

SECOND JOINT MOTION TO  
AMEND SCHEDULING ORDER

COME NOW Plaintiff, Tommark, Inc. ("Tommark") and Defendants, Travelers Indemnity Company and Travelers Property Casualty Company of America f/k/a Travelers Indemnity Company of Illinois (collectively, "Travelers"), by and through their respective undersigned counsel, and request that this Honorable Court extend the current deadlines for forty-five (45) days. In support, the parties state as follows:

1. This case involves a dispute regarding whether Tommark was entitled to a defense in connection with an underlying trademark infringement lawsuit pursuant to certain insurance policies issued by Travelers

2. On January 18, 2006, this Court issued a Scheduling Order

3. On September 1, 2006, this Court granted the parties' Joint Motion to Amend the Scheduling Order, which extended the deadlines in the Scheduling Order by two (2) months.

4. The parties have exchanged discovery responses and are working cooperatively on following up those responses and scheduling and completing the necessary depositions.

5. In addition, the parties are engaged in discussions to explore whether it is possible to amicably resolve the disputes between them at issue in this case.

6. An additional forty-five (45) day period is required to complete depositions and thereafter be in a position to file dispositive motions on this policy interpretation case. The additional time would also allow the parties adequate time to explore the possibility of reaching a settlement of the disputes between them without further involvement of the Court. The allowance of this motion would be in the best interest of the parties, as well as serving the interests of judicial economy. The parties anticipate being able to complete the remaining discovery within the time frame set forth herein. Accordingly, the parties jointly move to amend the Scheduling Order as follows:


Event	Current	Proposed
Fact Discovery – Final Deadline	October 31, 2006	December 15, 2006
Deadline for taking depositions, other than expert depositions	October 31, 2006	December 15, 2006
Dispositive Motions Deadline		
1. Deadline for moving papers	1 November 15, 2006	2. December 30, 2006
2. Deadline for opposition papers	1 December 15, 2006	3. January 30, 2007

7. Modification of pretrial orders, including a scheduling order, are within the sound discretion of the Court. FedR.Civ.P. 16(b); United States v. Charles George Trucking, Inc., 34F 3d 1081; 1090 (1<sup>st</sup> Cir. 1994) (district court has considerable discretion in case management and may modify previous Rule 16 orders at its pleasure).

CONCLUSION

For reasons set forth above, the parties submit that good cause exists to amend the Scheduling Order as requested.

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